

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

D.F. PRAY, INC.,

Plaintiff,

v.

FK CONSTRUCTION FUNDING, LLC

Defendant.

Civil Action No. 1:21-cv-12077-DPW

**DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT**

The Defendant FK Construction Funding, LLC ("FKC") moves pursuant to F.R.C.P. Rule 12(b)(6) to dismiss the Amended Complaint of D.F. Pray, Inc. ("D.F. Pray"), because the claims asserted therein should be brought as a compulsory counterclaim to a previously commenced civil action brought by FKC against D.F. Pray pending in the Suffolk Superior Court. Dismissal is also appropriate pursuant to F.R.C.P. Rule 12(b)(7) for failure to join Amps Electric, Inc. as a necessary party.

Alternatively, FKC requests the Court to abstain and stay the action pending a resolution of the Suffolk Superior Court action. In support of its motion, FKC relies on its Memorandum of Law submitted herewith.

WHEREFORE, FK Construction Funding, LLC requests its motion be allowed and the Amended Complaint be dismissed, or the Court abstain and stay the action pending resolution of the Suffolk Superior Court civil action.

FK CONSTRUCTION FUNDING, LLC

By its attorneys,

/s/ Charles R. Bennett, Jr.

Charles R. Bennett Jr. (BBO #037380)

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Dated: February 18, 2022

**CERTIFICATE OF SERVICE**

I, Charles R. Bennett, Jr., hereby certify that on February 18, 2022, I caused a copy of the foregoing to be served electronically upon:

Richard E. Briansky, Esq.  
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(Counsel for D.F. Pray, Inc.)

/s/ Charles R. Bennett, Jr.

Charles R. Bennett, Jr.